



## CITY OF NEW YORK CONFLICTS OF INTEREST BOARD

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April 24, 2012

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*Director of Enforcement*

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### **FOR IMMEDIATE RELEASE**

### **CONFLICTS OF INTEREST BOARD FINES FORMER COMMISSIONER OF THE NEW YORK CITY DEPARTMENT OF FINANCE \$22,000 FOR MULTIPLE VIOLATIONS OF THE CITY'S CONFLICTS OF INTEREST LAW.**

The New York City Conflicts of Interest Board (the "Board") has concluded a settlement with the former Commissioner of the New York City Department of Finance in which the former Finance Commissioner agreed to pay a fine of \$22,000 for her multiple violations of Chapter 68 of the City Charter, the City of New York's conflicts of interest law. The Board's enforcement action was based on a report of investigative findings submitted by the New York City Department of Investigation ("DOI").

The former Finance Commissioner acknowledged that, in February 2005, advice was sought from the Board on her behalf as to whether, in light of her position as Finance Commissioner, she could serve as a paid independent member of the Board of Directors of Tarragon Realty Investors Inc., a publicly-traded real estate investment company with no real estate in New York City. The Board advised, in writing, that she could serve as a Tarragon Board Member, provided that, among other things, she not use her City position to obtain any advantage for Tarragon or its officers or directors and she not use any City equipment, letterhead, personnel, or resources in connection with her Board service. Despite these written instructions from the Board, the former Finance Commissioner proceeded to engage in such prohibited conduct.

First, the Finance Commissioner admitted that, from March 2005 through April 2009, she used her City computer and City e-mail account to send and receive approximately 300 e-mails related to Tarragon. The former Finance Commissioner acknowledged that this conduct violated the City's conflicts of interest law, which prohibits any public servant from using City equipment or resources for any non-City purpose.

Second, the former Finance Commissioner admitted that, in August 2007, she sent two e-mails in particular from her Finance e-mail account on behalf of Tarragon. The first was to a Senior Client Manager at a bank, with whom and with which bank she had dealt in her official capacity as Finance Commissioner,

inquiring about the time frame for the bank's decision to extend loan commitments and provide additional financing to Tarragon on some of its properties for which the bank held mortgages and about whether that time frame might be extended. The second was to a Senior Program Analyst in the Governmental Liaison Office of the Internal Revenue Service inquiring about the issuance of a federal tax refund owed to Tarragon and the IRS's then current timeframe for issuing refund checks and when the refund might be issued in light of the major liquidity issues being faced by Tarragon. In both e-mails, the former Finance Commissioner identified herself as the Finance Commissioner. The former Finance Commissioner acknowledged that this conduct violated the City's conflicts of interest law, which prohibits a public servant from using his or her City position to benefit himself or herself or a person or firm with which he or she is associated. As a paid independent director of Tarragon, the former Finance Commissioner was "associated" with Tarragon within the meaning of the City's conflicts of interest law.

Third, the former Finance Commissioner admitted that she asked the First Deputy Commissioner at Finance and the former Commissioner's Executive Assistant at Finance to perform administrative tasks for her on Tarragon-related matters, which tasks these subordinates performed. The former Finance Commissioner acknowledged that this conduct violated the City's conflicts of interest law, which prohibits any public servant from using City personnel for any non-City purpose.

Separately, the former Finance Commissioner admitted that she sent an e-mail from her Finance e-mail account to the Vice President and General Counsel at a corporation that owns approximately twenty luxury rental apartment buildings in the City, with whom and with which owner she had dealt in her official capacity as Finance Commissioner, asking the Vice President to assist her registered domestic partner in looking for an apartment, which ultimately resulted in her renting an apartment in one of the corporation's buildings. In this e-mail, the former Finance Commissioner identified herself as the Finance Commissioner. The former Finance Commissioner acknowledged that this conduct violated the City's conflicts of interest law, which prohibits a public servant from using his or her City position to benefit himself or herself or a person or firm with which he or she is associated. The former Finance Commissioner acknowledged that she was "associated" with her domestic partner within the meaning of the City's conflicts of interest law.

The former Finance Commissioner also admitted that she sent an e-mail from her Finance e-mail account to the Senior Vice President of a trade association representing real estate interests in New York State, with whom and with which entity she had dealt in her official capacity as Finance Commissioner, and who was also a personal friend, for assistance for her recently laid off step-sister in finding a new job. In this e-mail, the former Finance Commissioner identified herself as the Finance Commissioner. The former Finance Commissioner acknowledged that this conduct violated the City's conflicts of interest law, which prohibits a public servant from using his or her City position to benefit himself or herself or a person or firm with which he or she is associated. The former Finance Commissioner acknowledged that she was "associated" with her step-sister within the meaning of the City's conflicts of interest law.

Finally, the former Finance Commissioner admitted that, in June and July 2008, she was personally and directly involved in the employment of her half-brother, who was employed at Finance as a paid summer and part-time college aide, including intervening with her half-brother's supervisor concerning supervisory and performance issues. The former Finance Commissioner acknowledged

that this conduct violated the City's conflicts of interest law, which prohibits a public servant from using his or her City position to benefit himself or herself or a person or firm with which he or she is associated. The former Finance Commissioner acknowledged that she was "associated" with her half-brother within the meaning of the City's conflicts of interest law.

The Board fined the former Finance Commissioner \$22,000. A copy of the disposition is attached.

The Board took the occasion of this disposition to remind public servants that they are prohibited from using City time or City resources for any non-City purpose, particularly any paid outside activity or business, and are prohibited from using their City position to benefit themselves or anyone with whom the public servant is associated, including a parent, spouse, domestic partner, sibling, child, or person or firm with which the public servant has a business or financial relationship. Public servants who have any questions about the City's conflicts of interest law are urged to contact the Board, which can be reached at (212) 442-1400.

The Conflicts of Interest Board is the City's ethics board and is responsible for enforcing Chapter 68 of the New York City Charter, the City's conflicts of interest law. The Board is composed of five members, appointed by the Mayor with the advice and consent of the City Council. Board penalties are civil fines.

Carolyn Lisa Miller, Director of Enforcement, handled this case for the Board. The Board gratefully acknowledges the work of DOI, its confidential investigative arm, DOI Commissioner Rose Gill Hearn, DOI Deputy Commissioner for Legal Affairs and General Counsel Majorie Landa, DOI Assistant General Counsel Brian Krist, and DOI Special Investigator Kristin Walunas.

The Board does not comment on Board dispositions, except as set forth above. For copies of any additional public documents, e-mail [miller@coib.nyc.gov](mailto:miller@coib.nyc.gov).

THE CITY OF NEW YORK  
OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS

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	:
NEW YORK CITY	:
CONFLICTS OF INTEREST BOARD,	:
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Petitioner,	:
	:
- against -	:
	:
MARTHA STARK,	:
	:
Respondent.	:
-----X	

**DISPOSITION**

COIB Case No. 2011-480  
OATH Index No. 120720

**WHEREAS**, the New York City Conflicts of Interest Board (the “Board”) commenced an enforcement action pursuant to Section 2603(h)(1) of Chapter 68 of the New York City Charter (“Chapter 68”) against Martha Stark (“Respondent”); and

**WHEREAS**, the Board and Respondent wish to resolve this matter on the following terms,

**IT IS HEREBY AGREED** by and between the parties as follows:

1. In full satisfaction of the above-captioned matter, Respondent admits to the following:

- a. From February 25, 2002, to May 1, 2009, I was employed by the New York City Department of Finance as its Commissioner. As such, I was at all relevant times hereafter mentioned a “public servant” within the meaning of Chapter 68. I am also an attorney.
- b. By letter dated February 16, 2005, advice was sought from the Board on my behalf by Special Counsel to the Commissioner of Finance as to whether, in light of my position as Finance Commissioner, I could serve as a paid independent member of the Board of Directors of Tarragon Realty Investors Inc., a publicly-traded real estate investment company with no real estate in New York City.
- c. By letter dated April 11, 2005, on which letter I was copied, the Board advised the Special Counsel to the Commissioner of Finance that it would not violate Chapter 68 for me to serve as a paid director of Tarragon, provided that I:

must refrain from: performing services for Tarragon when she is required to perform work for the City; using her official position or title to obtain any advantage for Tarragon or its officers, inside directors, or major shareholders; using City equipment, letterhead, personnel, or resources in connection with this outside activity;

disclosing or using confidential information concerning the City; or identifying herself as Finance Commissioner in the course of her duties for Tarragon, except as required by law.

- d. Despite these written instructions from the Board, I used the technology resources assigned to me by Finance, including my City computer and City e-mail account, to send and receive approximately 300 e-mails related to Tarragon in the four-year period between March 2005 and April 2009.
- e. I failed to appreciate the import of the Board's advice regarding my service on the Tarragon Board, and I mistakenly believed at the time that it was permissible for me to use a *de minimis* amount of City e-mail for my paid Tarragon Board service. I did not seek any clarification from the Board, either on my own or through the Special Counsel to the Commissioner of Finance, concerning that belief. I now understand that the Board's written advice prohibited any use of my City e-mail account for my paid Tarragon Board service and that the City of New York's Policy on Limited Personal Use of City Office and Technology Resources, also known as the "Acceptable Use Policy," explicitly defines an "unauthorized personal use" as including "any personal use of the City's office and technology resources for furtherance of a non-City business or non-City employment," which, I now understand, included my paid service on the Tarragon Board of Directors.
- f. In August 2007, I sent an e-mail from my Finance e-mail account to a Senior Client Manager at a bank, with whom and with which firm I had dealt in my official capacity as Finance Commissioner, inquiring about the time frame for the bank's decision to extend loan commitments and provide additional financing to Tarragon on some of its properties for which the bank held the mortgages and whether that time frame might be accelerated. My e-mail had "Personal Question" as its subject and identified me as Finance Commissioner through my e-mail signature block.
- g. In August 2007, I sent an e-mail from my Finance e-mail account to a Senior Program Analyst in the Governmental Liaison Office of the Internal Revenue Service inquiring about the issuance of a federal tax refund owed to Tarragon and the IRS's current timeframe for issuing refund checks and when the refund might be issued in light of the major liquidity issues being faced by Tarragon. My e-mail had "Personal Corporate Tax Refund Question" as its subject and identified me as Finance Commissioner through my e-mail signature block.
- h. I acknowledge that, by using a City computer and my Finance e-mail account for activities related to my paid Board service for Tarragon, I violated Chapter 68, specifically City Charter § 2604(b)(2) and Board Rules § 1-13(b), which state respectively:

No public servant shall engage in any business, transaction or private employment, or have any financial or other private interest, direct or

indirect, which is in conflict with the proper discharge of his or her official duties. [City Charter § 2604(b)(2)]

Except as provided in subdivision (c) of this section, it shall be a violation of City Charter § 2604(b)(2) for any public servant to use City letterhead, personnel, equipment, resources, or supplies for any non-City purpose. [Board Rules § 1-13(b)]

- i. I further acknowledge that, although I indicated that the matters were “personal,” because I identified myself as the Finance Commissioner in my e-mail signature block in my communications on behalf of Tarragon with the bank, an entity with business dealings with Finance, and the Internal Revenue Service, I used my City position to obtain a private advantage for an entity with which I was associated in violation of City Charter § 2604(b)(3), which states:

No public servant shall use or attempt to use his or her position as a public servant to obtain any financial gain, contract, license, privilege or other private or personal advantage, direct or indirect, for the public servant or any person or firm associated with the public servant.

City Charter § 2601(5) defines “associated” to include “a spouse, domestic partner, child, parent or sibling; a person with whom the public servant has a business or other financial relationship; and each firm in which the public servant has a present or potential interest.” As a paid independent director at Tarragon, I was associated with Tarragon within the meaning of Chapter 68.

- j. Despite the written instructions from the Board, I asked the First Deputy Commissioner at Finance and my Executive Assistant at Finance to perform administrative tasks for me on Tarragon-related matters, which tasks they performed.
- k. I acknowledge that, by having Finance personnel perform administrative tasks related to my paid Board service for Tarragon, I obtained a personal advantage in violation of Chapter 68, specifically City Charter § 2604(b)(2), pursuant to Board Rules § 1-13(b), as cited in paragraph 1(h), above.
- l. I further acknowledge that, by using my Finance subordinates to perform administrative tasks related to my paid Board service for Tarragon (including taking telephone messages from Tarragon Board members, receiving and sending a document by FedEx from Tarragon at Tarragon expense, faxing a document, scanning a document, and forwarding e-mails), which tasks I would otherwise have to perform myself, I used my City position to obtain a personal advantage in violation of City Charter § 2604(b)(3), as cited in paragraph 1(i), above.
- m. In January 2007, I sent an e-mail from my Finance e-mail account to the Vice President and General Counsel at a corporation that owns approximately twenty

luxury rental apartment buildings in the City, with whom and with which owner I had dealt in my official capacity as Finance Commissioner, asking the Vice President to assist my registered domestic partner (from whom I was separating, and from whom I was finally separated in April 2010) in looking for an apartment, which ultimately resulted in her renting an apartment in one of the corporation's buildings.

- n. I acknowledge that, because I identified myself as the Finance Commissioner in my e-mail signature block in my e-mail concerning my domestic partner I used my City position to obtain a private advantage for a person with whom I was associated within the meaning of Chapter 68, in violation of City Charter § 2604(b)(3), as cited in paragraph 1(i) above.
- o. In December 2008, I sent an e-mail from my Finance e-mail account to the Senior Vice President of a trade association representing real estate interests in New York State, with whom and with which entity I had dealt in my official capacity as Finance Commissioner and who is also a personal friend, for assistance for my recently laid off step-sister (who had been working in the real estate industry as a leasing agent) in finding a new job. My e-mail's "re" line read: "Hey and Personal Favor" and the e-mail identified me as Finance Commissioner through my e-mail signature block.
- p. I acknowledge that, although I indicated that the matter was personal, because I identified myself as the Finance Commissioner in my e-mail signature block in my e-mail concerning my step-sister I used my City position to obtain a private advantage for a person with whom I was associated within the meaning of Chapter 68, in violation of City Charter § 2604(b)(3), as cited in paragraph 1(i) above.
- q. In June and July 2008, I was personally and directly involved in the employment of my half-brother, a person with whom I am associated within the meaning of Chapter 68, who was employed at Finance as a paid summer and part-time college aide, including intervening with my half-brother's supervisor concerning supervisory and performance issues.
- r. I acknowledge that, by using my position at the Finance Commissioner to influence the Finance employment of my half-brother, I used my City position to obtain a private advantage for a person with whom I am associated within the meaning of Chapter 68, in violation of City Charter § 2604(b)(3), as cited in paragraph 1(i) above.

2. In recognition of the foregoing, Respondent agrees to the following:

- a. I agree to pay a fine of Twenty-Two Thousand Dollars (\$22,000) to the Board, by money order or by cashier, bank, or certified check, made payable to the "New York City Conflicts of Interest Board," at the time of my signing of this Disposition.
- b. I knowingly waive on my behalf and on behalf of my successors and assigns any rights to commence any judicial or administrative proceeding or appeal before any court of competent jurisdiction, administrative tribunal, political subdivision, or office of the City or the State of New York or the United States, and to contest the lawfulness, authority, jurisdiction, or power of the Board in imposing the penalty which is embodied in this Disposition, and I waive any right to make any legal or equitable claims or to initiate legal proceedings of any kind against the Board, or any members or employees thereof relating to or arising out of this Disposition or the matters recited therein.
- c. I confirm that I have entered into this Disposition freely, knowingly, and intentionally, without coercion or duress, and after having had the opportunity to be represented by an attorney of my choice; that I accept all terms and conditions contained herein without reliance on any other promises or offers previously made or tendered by any past or present representative of the Board; and that I fully understand all the terms of this Disposition.
- d. I agree that any material misstatement of the facts of this matter, including of the Disposition, by me or by my attorney or agent shall, at the discretion of the Board, be deemed a waiver of confidentiality of this matter.

3. The Board accepts this Disposition and the terms contained herein as a final disposition of the above-captioned matter only, and affirmatively states that other than as recited herein, no further action will be taken by the Board against Respondent based upon the facts and circumstances set forth herein, except that the Board shall be entitled to take any and all actions necessary to enforce the terms of this Disposition.



4. This Disposition shall not be effective until all parties have affixed their signatures below.

Dated: 3/22, 2012

Martha E. Stark

Martha Stark  
Respondent

Dated: 3/22, 2012

Richard W. Mark

Richard W. Mark  
Gibson, Dunn & Crutcher LLP  
Counsel for Respondent

Dated: APRIL 18, 2012

Steven B. Rosenfeld

Steven B. Rosenfeld  
Chair  
NYC Conflicts of Interest Board